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FEDERAL GOVERNMENT

Jeffrey Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

RE: Docket No. NHTSA 2001-10773, Notice 1; Reporting of Information about
Foreign Safety Recalls and Other Safety Campaigns

Dear Dr. Runge:

Enclosed are the comments of The Juvenile Products Manufacturers Association, Inc.
regarding the agency's proposal to establish standardized reporting requirements for foreign
safety recalls and other safety campaigns.

If you have any questions or need clarification regarding any of the points raised in these
comments, please contact us.

Sincerely,



Erika Z. Jones
Counsel to
The Juvenile Products Manufacturers Association, Inc.

cc: Docket Management, Room PL-401

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Comments of
The Juvenile Products Manufacturers Association, Inc.
on the Notice of Proposed Rulemaking on
Reporting of Information about Foreign Safety Recalls
and Other Safety Campaigns
NHTSA Docket No. 2001-10773, Notice 1

The Juvenile Products Manufacturers Association, Inc. (JPMA) submits the following comments in response to NHTSA's Notice of Proposed Rulemaking proposing regulations to implement Section 3(a) of the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act regarding foreign recalls.

The Juvenile Products Manufacturers Association, Inc. is a national trade association of more than 400 companies in the United States, Canada and Mexico. These companies manufacture and/or import infant and juvenile products such as cribs, car seats, strollers, bedding and a wide range of accessories and decorative items. Of the more than 400 JPMA members, only five still manufacture automobile child restraints for sale in the United States. The automobile child restraint manufacturers are Britax, Cosco, Evenflo, Graco/Century, and Peg Perego.

On August 17, 2001, JPMA filed comments in the docket addressing "early warning" reporting requirements (NHTSA Docket 2001-8677, Notice 1). JPMA recognizes that those comments were filed after the close of the comment period, and may not have been available in time to assist in the preparation of the NPRM addressing foreign recalls. In those comments, JPMA proposed a definition of a "substantially similar" child restraint for purposes of the early warning requirements. JPMA proposed that a child restraint model sold in a foreign country is "substantially similar" to a child restraint offered for sale in the United States if it has the same shell, same harness, same buckle and same base configuration (i.e. base or no base).

JPMA suggests that the same definition would be appropriate for purposes of reporting foreign recalls on "substantially similar" child restraints, as well. It is objective, and would be relatively easy to administer.

In the NPRM, NHTSA takes a different approach, and proposes to define "substantially similar motor vehicle equipment" as follows:

"Motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States are the same component or system, or both contain the component or system that

gave rise or contributed to a safety recall or other safety campaign in a foreign country, regardless of whether the part numbers are identical.”

NHTSA explained in the preamble to the foreign recall reporting proposal that it would consider foreign child restraints to be “substantially similar” to U.S. child restraints if “they incorporate one or more parts that are used in models of child restraints offered for sale in the United States.” NHTSA went on to explain that, despite this definition of “substantially similar” motor vehicle equipment, a child restraint manufacturer would not have to report a foreign campaign on its child seats “if the problem that led to the foreign campaign involved a component or part that was not used on any child restraint sold or offered for sale in the U.S.”

Although JPMA prefers the definition of “substantially similar” it proposed in August because it is more objective and does not require ad hoc inquiries about component utilization throughout a company’s product line within the five business day time limit, it would not object to the agency’s proposal, with three important reservations.

First, the agency’s definition is too broad, in that it would impute a reporting obligation on a manufacturer conducting a foreign recall if the component or part involved in the foreign recall was used on a child restraint sold in the United States by *another manufacturer*. This is not a minor issue. Child restraint manufacturers frequently obtain components or parts from vendors that are common to several members of the industry. For example, it is common to find a buckle or webbing supplier that is a vendor to more than one child restraint manufacturer. Because the manufacturer conducting the recall in this example would not necessarily know that one of its competitors was installing on a U.S. child restraint a component or part that was also installed on the recalled product in the foreign country, the recalling manufacturer cannot be expected to report that foreign recall to NHTSA.

If the agency intended to impute reporting obligations to manufacturers when its components or parts are also used in a competitor’s product, JPMA cannot support the proposal, because its members could not comply with such a requirement. To avoid this overly-broad reporting requirement, JPMA recommends that the definition be revised to read as follows (with proposed inserts shown as underlined material):

“Motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States by a manufacturer if such equipment and the equipment sold or offered for sale in the United States are the same component or system, or both contain the component or system that gave rise or contributed to a safety recall or other safety campaign conducted by the same manufacturer in a foreign country, regardless of whether the part numbers are identical.”

The second reservation about the agency’s proposal is that it is unclear whether NHTSA intended to limit the foreign recall reporting to instances in which the *same* component or system is used in both the foreign and the U.S. model, or whether the

agency intended to extend the foreign recall reporting to instances in which the component or system at issue is **substantially similar** to a component or system used in a U.S. child restraint model manufactured by that manufacturer. Although the text of the proposed rule appears to limit the reporting obligation to instances in which the **same** component or system is at issue, there is conflicting language in the preamble discussion suggesting that NHTSA may expect foreign recall reports when **substantially similar** components or systems are at issue. If the preamble discussion was the correct statement of the agency's intent, JPMA cannot support the proposal, because the agency has not proposed any definition of a "substantially similar" component or system to guide determinations of whether a report would be required. For example, at some level, all child restraint buckles are "substantially similar" to all other child restraint buckles, in that they perform the same function using similar materials and designs. Yet, as the agency knows, there can be substantial differences in buckle performance based on such issues as the hardware specifications, the quality of the buckle manufacturer, and the interaction among the buckle components. JPMA urges the agency to clarify in the preamble to the final rule, as well as in the text of the rule itself, that the reporting requirement applies only when the **same** component or system that gave rise or contributed to the foreign recall is used in the foreign and U.S. models manufactured by that manufacturer.

JPMA's final reservation about the agency's proposal is that it is wholly unsuited to be used for the early warning rule. To the extent that NHTSA wants a common definition of "substantially similar equipment" for the two programs, as the agency suggested in the preamble, then the proposal to determine "substantial similarity" on the basis of identifying common components must be rejected for foreign recalls, because it cannot work for the early warning rule.

An example may help to illustrate why a component-based reporting system for early warning is unsuitable. Assume that a child restraint manufacturer has 10 "platforms" of child restraints, and has 5 different models (on average) in each platform, for a total of 50 models. Each model contains between 60 and 120 individual components (or parts), some of which are common with other models and some of which are not. Moreover, as vendors change during the course of a model's production run, a component that was common to three models in 1999 may be used in four models in 2000, but only two in 2001, and so on. Establishing and updating the ever-changing matrix of commonality among components and parts would be enormously difficult. Moreover, when an "early warning" report (such as a claim or lawsuit) is received by the manufacturer, it rarely alleges a defect at the subcomponent or part level. Rather, it alleges that the child restraint itself is generally defective in some manner. For all of these reasons, a component-based reporting system for early warning is not suitable. Therefore, if NHTSA desires to have common definitions for both reporting programs, it should adopt a model-based definition of "substantially similar" child restraint, along the lines of that proposed by JPMA in August 2001.

As JPMA noted in its August 2001 comments, child restraint manufacturers are substantially smaller than motor vehicle manufacturers and do not have sophisticated data storage and retrieval systems. Moreover, the financial condition of the industry is still not strong, and the few remaining companies in the industry are not in a position to support large new investments at this time. NHTSA should assure that its foreign recall reporting rule (and its early warning rule, for that matter) will not force substantial new investments by the child restraint manufacturers in new recordkeeping systems, both because they are not in a position to make those investments and because it would significantly and unfairly increase the costs of doing business on these five JPMA members relative to their competitors in other lines of juvenile products who do not manufacture automobile child restraints.

JPMA wishes to address one additional issue raised by the NPRM on foreign recalls. The TREAD Act requires reporting of foreign safety recalls "or other safety campaigns." JPMA believes that the intent of Congress in including "other safety campaigns" in the reporting requirement was to ensure that NHTSA would be notified when manufacturers undertake remedial campaigns to address safety defects in countries that do not have a counterpart to NHTSA or to the Vehicle Safety Act. NHTSA's definition of "other safety campaigns" is much broader than that concept, however, and would encompass (for example) child passenger safety promotional programs in foreign countries. JPMA does not believe that Congress intended to require reporting of foreign campaigns that are not related to safety defects (or noncompliances), and urges NHTSA to clarify this issue in the final rule to avoid any question about what sort of campaigns must be reported to the agency.

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JPMA appreciates this opportunity to provide comments to the agency. If there is any additional information that JPMA or its members can provide to assist the agency in developing this rule, please contact us.